

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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JUN 19 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	
	)	
SBC Communications, Inc. and BellSouth Corporation	)	File No. 0000117778
	)	<i>et al.</i>
	)	
For consent to Transfer of Control or	)	
Assignment of Domestic Mobile Wireless	)	
Interests to Alloy, LLC	)	

To: Wireless Telecommunications Bureau

PETITION TO DISMISS OR DENY

Thumb Cellular Limited Partnership (TCLP), by its attorney, hereby petitions to deny the captioned set of applications in which, *inter alia*, SBC Communications, Inc. (SBC) seeks to assign, or transfer control of, its cellular radio interests to Alloy, LLC (Alloy). In support whereof, the following is respectfully submitted:

1) Page 1 of Exhibit 1 of the captioned application states that

by this transaction, SBC and BellSouth will transfer virtually all of their current interests in domestic mobile wireless operations to a newly created limited liability company ("Newco") which will thereby become the foundation for the creation of the sixth national wireless carrier.

Pages 4-5 of Exhibit 1 to the captioned application lists various interests which are not being contributed to the joint venture. Excluded interests include "authorizations relating to paging, wireless video and fixed wireless services" as well as "certain CMRS authorizations that will be

divested prior to the closing of this transaction . . .” Thus, according to Exhibit 1, all of SBC cellular interests, except for those listed as being excluded, are to be transferred to Alloy.

2) On March 20, 2000 TCLP filed a *Petition for Reconsideration* concerning the grants of *pro forma* transfer of control applications filed by SBC concerning a purported ownership interest in TCLP (File Nos. 0000063348, 0000052981). In those applications filed with the Commission SBC falsely stated that Ameritech was an owner in TCLP and SBC falsely stated that it was “unable to obtain” TCLP’s TIN for electronic filing purposes even though SBC made no contact with TCLP to try to obtain that information.<sup>1</sup> In order to file those *pro forma* applications, and in order to avoid advising TCLP that they were being filed, SBC filed paper versions of the *pro forma* applications with various waiver requests relating to the electronic filing requirement.

3) TCLP’s *Petition for Reconsideration* provided the Commission with a copy of TCLP’s December 3, 1991 Licensee Qualification Report (FCC Form 430) which showed that Ameritech was not a partner in TCLP and that, therefore, there was no interest for SBC to acquire from Ameritech. SBC filed an opposition which argued, *inter alia*, that TCLP’s argument was raised too late, however, SBC did not say a single word to dispute the legitimacy or accuracy of the 1991 FCC Form 430 ownership report submitted with the *Petition for Reconsideration*. TCLP rebutted the lateness argument first by demonstrating that the issue was timely raised and then by providing citations that even if the argument were untimely raised, finality concerns are waived where a fraud is committed on the Commission (i.e., SBC’s false assertion that Ameritech had an ownership interest in TCLP which was transferable under the Commission’s rules) and where grants are made by mistake. TCLP also responded that the Commission’s transfer/assignment rules apply to

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<sup>1</sup> If Ameritech were a partner in TCLP, one would assume that Ameritech would have had TCLP’s TIN number for its own tax reporting purposes.

exchanges of ownership interests, those rules are not designed to accommodate a party's desire to transfer/assign stale claims to an ownership interest in a Commission licensee which claims had never been raised in any tribunal of competent jurisdiction.

4) The current state of the record, then, is that SBC is claiming an ownership interest in TCLP and TCLP is seeking reconsideration of the grant of SBC's fraudulently prosecuted *pro forma* assignment applications. As discussed above, the captioned applications propose to assign to a joint venture company, or to transfer control of, all of SBC's cellular interests, with the exception of specifically listed licenses and interests. Accordingly, the captioned applications advise the public that SBC intends to transfer or assign to Alloy an interest in TCLP. Because the captioned applications contemplate a continuation of the ruse in which SBC claims a cognizable interest in TCLP which is subject to the Commission's assignment/transfer of control rules, and because SBC's use of *pro forma* filing procedure using paper applications will afford TCLP with no opportunity to object prior to consummation, TCLP is left with no option but to seek denial of the captioned joint venture proposal.<sup>2</sup>

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<sup>2</sup> TCLP's April 13, 2000 *Reply to Opposition to Petition for Reconsideration*, at 1 (File Nos. 0000063348 & 0000052981), states that

as The Partnership noted at page 4 of the *Petition for Reconsideration*, The Partnership did not see the need to make a federal case out of SBC's filing of the captioned application if appropriate corrective action were taken. However, rather than merely filing appropriate clarifying statements, SBC insists that it has "inherited a dispute[d]" claim to a 23% limited partnership interest . . . . Frankly, given the extent of SBC's Commission regulated ownership interests, SBC's desire to litigate this issue regarding a small cellular RSA market, despite clearly contradictory facts, demonstrates a profound lack of proportionality and vision.

TCLP's April 13, 2000 *Reply to Opposition to Petition for Reconsideration*, at 2 (File Nos. 0000063348 & 0000052981). TCLP's *Petition for Reconsideration* sought a correction of the Commission's records regarding the public notices which erroneously indicated that SBC was an  
(continued...)

5) Attached hereto is a copy of TCLP's December 3, 1991 FCC Form 430 Licensee Qualification Report. Exhibit 9(a) shows that Agri-Valley Communications, Inc. is the general partner owning 62% of TCLP and that Century Telephone Enterprises, Inc. is TCLP's sole limited partner, owning a 38% interest. Neither Ameritech nor SBC are listed as owners in TCLP in the Commission's licensing records. SBC's assertions that it is an owner in TCLP are false statements of material fact when made in the context of ownership transfer/assignment applications and therefore constitute serious misrepresentations to the Commission.

6) Candor and truthfulness before the Commission are fundamental factors in determining whether a licensee has the qualifications to remain a licensee. *Algreg Cellular Engineering*, FCC 97-178, ¶ 67, released June 3, 1997 (Comm'n); *San Joaquin Television Improvement Corporation*, 2 FCC Rcd 7004, 7005 ¶ 9 (Comm'n 1987); *see also Chameleon Radio Corporation*, 11 FCC Rcd 11088, 11095 ¶ 15 (Comm'n 1996) (granting applications which contain misrepresentations is contrary to the public interest); 47 C.F.R. §1.17 (requirement of truthfulness in written information provided to the Commission). The Commission has stated that

it is well settled that the ability of the Commission to rely on the representations of applicants and licensees is crucial to the functioning of our regulatory process. *Richardson Broadcast Group*, 7 FCC Rcd 1583 (1992) (subsequent history omitted). Indeed, the Commission's demand for absolute candor is itself all but absolute. *Emission de Radio Balmaseda, Inc.*, 7 FCC Rcd 3852, 3858 (Rev. Bd. 1992), rev. denied, 8 FCC Rcd 4335 (1993). The *sine qua non* for a finding of disqualifying misrepresentation or lack of candor is an intent to deceive the Commission. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Moreover, Section 1.17 of the Commission's Rules requires truthful written statements in all filings with the Commission.

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<sup>2</sup>(...continued)

owner in TCLP. However, rather than submit a corrective statement and seek to withdraw the *pro forma* applications, SBC chose to try to defend its false claim of an ownership interest in TCLP. Had SBC taken a more reasonable and measured approach in the proceeding earlier this year as TCLP courteously requested, the instant and earlier litigation would likely be unnecessary.

*MobileMedia Corporation, et al.*, 12 FCC Rcd. 14896 ¶ 7 (Comm'n 1997).

Thus, misrepresentation and lack of candor in an applicant's dealings with the Commission are serious breaches of trust and undermine the integrity of our processes. . . . As such, even the most insignificant misrepresentations may be treated as disqualifying. *FCC v. WOKO*, 329 U.S. 223, 227 (1946); *see also Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454, 461-62 (D.C. Cir. 1980).

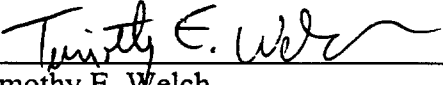
*KQED, Inc.*, 3 FCC Rcd 2821, 2826 ¶ 25 (Rev. Bd. 1988).

7) The Commission will conduct a hearing where the Commission finds that a party has misrepresented material facts or lacked candor in information filed with the Commission. *Baton Rouge MSA Limited Partnership*, 9 FCC Rcd. 561, 563 (Com. Car. Bur. 1994); *Catherine L. Waddill*, 8 FCC Rcd. 2169, 2172 (Comm'n 1993); *Century Cellunet of Jackson MSA Limited Partnership*, 6 FCC Rcd. 6150, 6151 (Comm'n 1991); *MCI Telecommunications Corporation*, 3 FCC Rcd. 509, 514 (Comm'n 1988); *Pass Word, Inc.*, 76 F.C.C.2d 465, 519 (Comm'n 1980). The Commission has determined that "under the statutory scheme, it is an applicant's burden to establish its qualifications." *The Committee for Full Value of Storer Communications, Inc.*, 101 F.C.C.2d 434, 448 ¶ 35 (Comm'n 1985); 47 U.S.C. § 310(d) (transfer applicants must establish their qualifications as if filing an application pursuant to § 308). Because SBC intentionally misrepresented its ownership status in TCLP, SBC has not established its qualifications and the Commission must conduct a hearing into the matter to determine whether SBC possesses the requisite qualifications to be a transferor/assignor as well as a controlling owner of Alloy, the proposed assignee/transferee in the captioned applications.

WHEREFORE, in view of the information presented herein, it is respectfully submitted that the grants of the captioned applications must be reconsidered.

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June 19, 2000

Respectfully submitted,  
THUMB CELLULAR LIMITED PARTNERSHIP

  
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Dean George Hill  
Timothy E. Welch

December 3, 1991

Gregory J. Vogt, Chief  
Mobile Services Division  
Common Carrier Bureau  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED  
DEC - 3 1991  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: FCC Form 430  
Thumb Cellular Limited Partnership  
Cellular Station KNKQ268  
RSA 481B--Michigan #10--Tuscola

Dear Mr. Vogt:

On September 12, 1991 Thumb Cellular Limited Partnership filed an application for a modification to the referenced cellular radio station (File No. 01714-CL-MP-91). Except for a minor ownership change which concerns the non-participation of a minority limited partner, there was no change from the ownership initially approved by the Commission for the referenced cellular radio station, i.e., Agri-Valley Communications, Inc. continues to be the majority/-general partner. On October 22, 1991 Thumb Cellular Limited Partnership filed two microwave applications with the Domestic Facilities Division. As a part thereof, Thumb Cellular Limited Partnership filed an FCC Form 430. The ownership portion of the application bearing File No. 01714-CL-MP-91 and the FCC Form 430 filed with the Domestic Facilities Division contain identical ownership information.

Attached hereto is a copy of the FCC Form 430 which was filed with the Domestic Facilities Division. Although the instant filing does not appear to be required by the Rules, this filing is being made to ensure that the Mobile Services Division's files parallel the files of the Domestic Facilities Division.

Should any questions arise concerning these matters, kindly contact this office.

Respectfully,

*Timothy E. Welch*  
Timothy E. Welch

cc: Thumb Cellular Limited Partnership